

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 428X)

BNSF RAILWAY COMPANY–ABANDONMENT EXEMPTION–IN COLFAX
COUNTY, NM

Decided: July 21, 2005

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F–Exempt Abandonments to abandon a 36.90-mile line of railroad between milepost 0.00 near French, and milepost 36.90 near York Canyon, in Colfax County, NM. Notice of the exemption was served and published in the Federal Register on June 21, 2005 (70 FR 35777-78) (June 21 decision). The exemption was scheduled to become effective on July 21, 2005, unless stayed by the Board or a formal expression of intent to file an offer of financial assistance (OFA) under 49 U.S.C. 10904 and 49 CFR 1152.27(c)(2) was filed by July 1, 2005.

On June 28, 2005, Hust Brothers, Inc. (HBI), filed a formal expression of intent to file an OFA to purchase the line, which had the effect of automatically staying the effective date of the exemption for 10 days, until July 31, 2005. HBI simultaneously requested BNSF to provide the following information prescribed at 49 CFR 1152.27(a): (1) copies of the most recent report on the physical condition of the line; (2) BNSF's estimate of the net liquidation value (NLV) of the line, with supporting data; and (3) BNSF's minimum purchase price for the line.

On July 15, 2005, Colfax Land and Cattle Company, LLC (Colfax), a New Mexico limited liability company, and Vermejo Park, LLC (Vermejo), a Georgia limited liability company, late-filed separate formal expressions of intent to file an OFA and requested that the Board accept them. Both Colfax and Vermejo argue that the Board has accepted such late-filed notices in the past, citing New York Central Lines, LLC–Abandonment Exemption–in Vermillion and Warren Counties, IN, STB Docket No. AB-565 (Sub-No. 4X) (STB served Oct. 29, 2001); New York Central Lines, LLC–Abandonment Exemption–in Berkshire County, MA, STB Docket No. AB-565 (Sub-No. 3X) (STB served Feb. 22, 2002); and Seminole Gulf Railway, Inc.–Abandonment Exemption–in Lee County, FL, Docket No. AB-400 (Sub-No. 2X) (ICC served Dec. 22, 1994). Colfax and Vermejo also requested that BNSF provide the following information, pursuant to 49 CFR 1152.27(a): (1) the minimum purchase price BNSF seeks; (2) copies of the most recent report on the physical condition of the line; and (3) BNSF's NLV of the line, with supporting data reflecting available real estate

appraisals (including documents to verify BNSF's fee ownership), assessments of the quality of track materials on the line, and removal cost estimates. While Colfax's and Vermejo's notices of intent were not filed on time, because BNSF has not objected, the late-filed notices of intent will be accepted.

On July 20, 2005, Colfax and Vermejo filed separate petitions to toll the deadline for submitting an OFA. In their petitions, Colfax and Vermejo indicate that, because BNSF had previously received a notice of intent by HBI requesting the same required information, they assumed that such information would be readily available. They state that they have not received the information from BNSF, and thus are not able to meet the Board's deadline. Because the offerors need additional time to obtain necessary information from BNSF, the requests of Colfax and Vermejo will be granted. As a result, an OFA will be due 15 days after BNSF provides Colfax and Vermejo with the required information, and the effective date of the exemption will be extended until 10 days after that information has been provided.¹

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Colfax's and Vermejo's late-filed notices of intent to file an OFA are accepted.
2. BNSF is directed to provide Colfax and Vermejo with the information they requested in their July 15, 2005 letters, and to notify the Board in writing that it has done so.
3. The deadline for OFAs to be filed will be tolled until 15 days following the date that BNSF provides Colfax and Vermejo with the requested information.
4. The effective date of the exemption is postponed until 10 days after the due date for the filing of OFAs.

¹ Because these extensions are not date-specific, BNSF is directed to notify the Board when it has furnished the requested information to Colfax and Vermejo so that the due date for filing OFAs and the effective date of the exemption can be determined for the record.

5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary